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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

February 26, 1991

Robert Bernstein, M.D., F.A.C.P.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR91-110

Dear Dr. Bernstein:

You ask whether an investigation report and an incident report made in connection with a Department of Health investigation of a reported case of abuse or neglect at a convalescent center are subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11,480.

We have considered the exception you claimed, specifically section 3(a)(1), and have reviewed the documents at issue. The section 3(a)(1) exception from disclosure includes information made confidential by statutory law. Health and Safety Code section 242.127 makes the following provisions regarding reports connected with investigations of abuse or neglect under subchapter E of chapter 242 of the Health and Safety Code:

A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency.

Administrative rules adopted by the Department of Health provide that records and reports of investigations under subchapter E, with exceptions not applicable here, are confidential where the the investigation concludes that abuse or neglect did occur. See 25 T.A.C. § 145.88(i). The investigation report here concluded that neglect had occurred.

The requestor appears to argue that the investigation in question was not preceded by a "report" of abuse or neglect to the Department of Health, and therefore, the investigation was not one conducted under subchapter E, and that the requested investigation and incident reports are consequently not subject to the above-quoted confidentiality provisions of section 242.127.

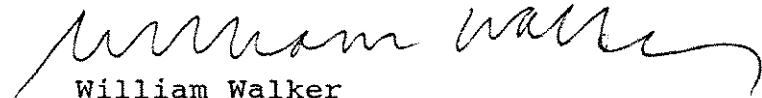
Section 242.126 authorizes the Department of Health to conduct an investigation under subchapter E after receiving an "oral or written report" of abuse or neglect as provided for in sections 242.122 et seq. Section 242.122(a) provides that any person, "including an owner or employee of an institution," having reason to believe abuse or neglect adversely affecting an institution resident has occurred shall make a report. Section 242.123 requires the report to contain the "name and address of the resident" allegedly having been abused or neglected and the "name and address of the person responsible for the care of the resident, if available," and "other relevant information." See also Health & Safety Code § 242.122(b) (employees of institutions must sign statement that they realize they may be criminally liable for failure to report abuse). We understand from the requested investigation and incident reports that the report of abuse or neglect here was made by telephone to the Department of Health by an employee of the institution in which the incidents allegedly occurred within an hour or so of the alleged occurrences, and that the investigation commenced within an hour of the receipt of the report.

We are unable to make findings of fact in connection with an open records ruling. However, in this case it appears that a report was made to the Department of Health sufficient to apprise it that possible abuse or neglect had occurred at the institution in question and to trigger the investigation, which did in fact conclude that neglect had occurred. Under the circumstances, we do not think a court would find merit in the requestor's argument that no report was made so as to authorize the department to make a chapter 242 investigation. We conclude that the requested investigation report and incident report were made in connection with an investigation of a reported case of abuse or neglect under chapter 242, subchapter E, and therefore they fall within the confidentiality provision of section 242.127. They are thus excepted from disclosure under section 3(a)(1) of the Open Records Act. See Attorney General Opinion JM-1048 (1989) (former section 16(h) of V.T.C.S. article 4442c, now section 242.127, in conjunction with section 3(a)(1) of the Open Records Act, protects from required

public disclosure Department of Health's reports made in investigation of abuse or neglect).

Because the applicable statutes on their face resolve the legal issues presented in your request, we are responding to your request with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-110.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/lcd

Ref.: ID# 11480

Enclosure: Attorney General Opinion JM-1048 (1989)

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